

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

RADCLIFF INVESTMENTS LIMITED,  
ROTHSCHILD TRUST GUERNSEY LIMITED,  
and ROBERT D. SALEM,

Defendants.

Adv. Pro. No. 10-04517 (SMB)

**STIPULATED ORDER GRANTING MOTION TO DISMISS AS TO COUNT  
THREE OF PROPOSED FIRST AMENDED COMPLAINT**

Plaintiff Irving H. Picard (the “Trustee”), as trustee of the substantively consolidated liquidation proceeding of Bernard L. Madoff Investment Securities LLC (“BLMIS”), under the Securities Investor Protection Act (“SIPA”), 15 U.S.C. §§ 78aaa *et seq.*, and the estate of Bernard L. Madoff, individually, and defendant Rothschild Trust Guernsey Limited (“Defendant,” and together with the Trustee, the “Parties”), by and through their respective undersigned counsel, state as follows:

**WHEREAS**, on November 30, 2010, the Trustee initiated the above-captioned adversary proceeding in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) by filing a complaint against Defendant, among others.<sup>1</sup> *See Picard v. Radcliff Investments Limited, et al.*, Adv. Pro. No. 10-04517 (SMB), ECF No. 1;

**WHEREAS**, on May 15, 2012 and June 7, 2012, respectively, the United States District Court for the Southern District of New York, the Honorable Jed S. Rakoff, entered Orders in which he withdrew the reference in certain adversary proceedings pursuant to 28 U.S.C. § 157(d) to determine whether SIPA and/or the Bankruptcy Code as incorporated by SIPA apply extraterritorially, permitting the Trustee to avoid initial transfers that were received abroad or to recover from initial, immediate, or mediate foreign transferees (the “Extraterritoriality Issue”). *See Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 12-mc-0115 (JSR), ECF Nos. 97 and 167;

**WHEREAS**, after consolidated briefing and oral argument on the Extraterritoriality Issue, *see id.*, ECF Nos. 234, 309, 310, 322, and 357, on July 7, 2014, Judge Rakoff entered an Opinion and Order (the “Extraterritoriality Order”) and returned the withdrawn adversary proceedings to the Bankruptcy Court for further proceedings consistent with the Extraterritoriality Order. *See Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 513 B.R. 222 (S.D.N.Y. 2014);

**WHEREAS**, on July 28, 2014, Judge Rakoff entered a Stipulation and Supplemental Opinion and Order in which he supplemented the Extraterritoriality Order to direct that certain additional adversary proceedings should “also be returned the Bankruptcy Court for further

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<sup>1</sup> Robert D. Salem never responded to the Complaint and an Entry of Default was entered against Mr. Salem on September 18, 2014. This Order does not apply to Mr. Salem.

proceedings consistent with” the Extraterritoriality Order. *See Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 12-mc-0115 (JSR), ECF No. 556;

**WHEREAS**, on December 10, 2014, the Bankruptcy Court entered an Order concerning further proceedings on Extraterritoriality Issue that directed the Defendant, the Trustee, and the Securities Investor Protection Corporation to submit supplemental briefing to address (a) which counts asserted in the adversary proceeding against the Defendant should be dismissed pursuant to the Extraterritoriality Order or the legal standards announced therein and (b) whether the Trustee shall be permitted to file an amended complaint containing allegations relevant to the Extraterritoriality Issue as proffered by the Trustee (together, the “Extraterritoriality Motion to Dismiss”). *See Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, Adv. Pro. No. 08-01789 (SMB), ECF No. 8800;

**WHEREAS**, on December 31, 2014, the Defendant filed a consolidated memorandum of law in support of the Extraterritoriality Motion to Dismiss. *See Picard v. Radcliff Investments Limited, et al.*, Adv. Pro. No. 10-04517 (SMB), ECF No. 37;

**WHEREAS**, pursuant to further scheduling Orders, *see Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, Adv. Pro. No. 08-01789 (SMB), ECF Nos. 8990, 9350, and 9720, on June 26, 2015, the Trustee filed (a) a consolidated memorandum of law in opposition to the Extraterritoriality Motion to Dismiss, (b) a supplemental memorandum in opposition to the Extraterritoriality Motion to Dismiss, and (c) a statement attaching the *Trustee’s Proposed First Amended Complaint* (the “Proposed FAC”). *See Picard v. Radcliff Investments Limited, et al.*, Adv. Pro. No. 10-04517 (SMB), ECF Nos. 44, 45 and 46;

**WHEREAS**, on September 30, 2015, the Defendant filed (a) a consolidated reply memorandum of law in support of the Extraterritoriality Motion to Dismiss and (b) a

supplemental reply memorandum in support of the Extraterritoriality Motion to Dismiss. *See id.*, ECF Nos. 48 and 49;

**WHEREAS**, on December 16, 2015, the Bankruptcy Court heard oral argument on the Extraterritoriality Motion to Dismiss. *See Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, Adv. Pro. No. 08-01789 (SMB), ECF No. 12081;

**WHEREAS**, on November 22, 2016, the Bankruptcy Court issued a Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers (the “Memorandum Decision”) that granted in part the Extraterritoriality Motion to Dismiss as to Defendant. *See Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, Adv. Pro. No. 08-01789 (SMB), ECF No. 14495;

**WHEREAS**, the Memorandum Decision directed that the Trustee’s claim in this adversary proceeding should be dismissed as to Count Three of the Proposed FAC (the “Dismissed Claim”), and otherwise denied;

**NOW**, for the reasons set forth in the Memorandum Decision, which is incorporated herein and attached hereto as Exhibit A, the Parties agree and stipulate and the Bankruptcy Court hereby orders:

1. The Bankruptcy Court has subject matter jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) and (e)(1) and 15 U.S.C. § 78eee (b)(2)(A) and (b)(4).

2. The Extraterritoriality Motion to Dismiss is GRANTED solely as to Count Three of the Proposed FAC.

3. Within thirty (30) days of the entry of this order, the Trustee shall file the Proposed FAC, revised to be consistent with the terms of the Memorandum Decision.

Dated: January 20, 2017  
New York, New York

By: /s/ David J. Sheehan  
**BAKER & HOSTETLER LLP**  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Email: [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)  
Fernando A. Bohorquez, Jr.  
Email: [fbohorquez@bakerlaw.com](mailto:fbohorquez@bakerlaw.com)  
Elyssa S. Kates  
Email: [ekates@bakerlaw.com](mailto:ekates@bakerlaw.com)  
*Attorneys for Irving H. Picard, Trustee  
for the Substantively Consolidated SIPA  
Liquidation of Bernard L. Madoff Investment  
Securities LLC and the Estate of Bernard L.  
Madoff*

By: /s/ Jeff E. Butler  
**CLIFFORD CHANCE US LLP**  
31 West 52<sup>nd</sup> Street  
New York, New York 10019  
Telephone: (212) 878-8000  
Jeff E. Butler  
Email: [jeff.butler@cliffordchance.com](mailto:jeff.butler@cliffordchance.com)  
*Attorneys for Radcliff Investments Limited  
and Rothschild Trust Guernsey Limited*

**SO ORDERED**

**Dated: March 3<sup>rd</sup>, 2017**  
**New York, New York**

/s/ STUART M. BERNSTEIN  
**HONORABLE STUART M. BERNSTEIN**  
**UNITED STATES BANKRUPTCY JUDGE**